

SCOTT ERIK ASPHAUG, OSB # 833674
Acting United States Attorney
District of Oregon
ADAM E. DELPH, WSB #50312
adam.delph@usdoj.gov
Assistant United States Attorney
405 East 8th Avenue, Suite 2400
Eugene, Oregon 97401
Telephone: (541) 465-6771
Attorneys for United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

3:21-cr-00205-HZ

v.

MALIK FARD MUHAMMAD,
Defendant.

**UNITED STATES' RESPONSE IN
OPPOSITION TO DEFENSE MOTION
FOR REVIEW OF DETENTION AND
RELEASE ON PRETRIAL
CONDITIONS**

Defendant Malik Muhammad threw a Molotov cocktail that landed approximately fifteen feet from a police vehicle, putting multiple officers at risk of death or serious injury. Two days later, he threw the same type of incendiary device at a line of police officers; it burst into flames and caught an officer's pant leg on fire. Defendant was finally arrested after being involved in thousands of dollars in property damage to downtown Portland, supplying other rioters with baseball bats (which were also used to cause property damage), and fleeing from law enforcement with a firearm. Subsequent searches of Muhammad's property revealed more firearms and cannisters of an ignitable liquid.

**United States' Response in Opposition to Defense Motion for
Review of Detention and Release on Pretrial Conditions**

Page 1

Revised March 2018

Muhammad was initially charged by federal complaint for receipt or possession of unregistered firearms in violation of Title 26 U.S.C. § 5861(d), engaging in civil disorder and obstructing of law enforcement in violation of 18 U.S.C. § 231(a)(3), and use of explosives to commit a federal felony in violation 18 U.S.C. § 844(h)(1) and (2). (ECF No. 1). Muhammad made his initial appearance for the complaint on June 1, 2021 and was detained pending a detention hearing on June 2, 2021.

In anticipation of the detention hearing, the government filed a Motion for Detention on June 1, 2021. (ECF No. 5). At the conclusion of the detention hearing, the Magistrate Court entered an order detaining Muhammad as a risk of flight and danger to the community. (ECF No. 9). On June 30, 2021, Muhammad was arraigned on a six-count indictment that generally mirrored the original complaint, charging two counts of Civil Disorder in violation of 18 U.S.C. § 231(a)(3); two counts of Using an Explosive to Commit a Felony in violation of 18 U.S.C. § 844(h)(1); and two counts of Unlawful Possession of a Destructive Device in violation of 26 U.S.C. §§ 5841, 5861(d) and 5871. (ECF No. 14). Muhammad also faces a state indictment alleging 26 felonies, including Attempted Aggravated Murder, Attempted Murder 1, Unlawful Manufacture of an Explosive Device, Criminal Mischief 1, Riot and Unlawful Possession of a Firearm.

On October 26, 2021, Muhammad filed a Motion for Review of Detention and Release on Pretrial Conditions. (ECF No. 23). Muhammad also submitted to the Court a Comprehensive Substance Abuse Assessment prepared by Daniel Steckler, dated August 6, 2021, and an interim forensic psychological evaluation of Mr. Muhammad prepared by Suzanne R. Best, Ph.D., dated October 8, 2021.

Muhammad is still a danger to the community and a flight risk. Muhammad repeatedly and intentionally jeopardized the lives of law enforcement officers, destroyed public property, and encouraged others to commit violence. He should remain detained.

FACTUAL BACKGROUND

Muhammad and his girlfriend (at the time) traveled to the Portland Metro area from their home in Indianapolis, Indiana for the specific purpose of violently engaging in civil disorder; he was successful and now faces both federal and state charges.

On September 5, 2020, there was a large civil disturbance in east Portland, which included hundreds of people. Demonstrators threw dangerous objects at the Police, including commercial grade fireworks, Molotov cocktails,¹ bottles, and other objects. At least one demonstrator was seriously burned by a Molotov cocktail that was thrown in the direction of the police. The event was declared a riot, and police made multiple arrests. Muhammad was present during this event and provided baseball bats to members of the crowd.

Following Muhammad's arrest in October 2020, law enforcement seized his cell phone and found messages where he bragged about providing baseball bats. The cell phone also contained a shopping list including common ingredients used to make a Molotov cocktail. The day after the violent demonstration, police located a discarded baseball bat with a Goodwill price tag in the area where the event occurred. Police found the Goodwill store where it was purchased and surveillance videos and receipts revealed Muhammad and his girlfriend, Kristin McGuire, buying the bats and multiple "growler" bottles on September 4, 2020:

¹ By design, a Molotov cocktail is comprised of a breakable container in which a flammable agent is present. In addition, a Molotov cocktail includes a wick or other ignition means which is placed in or otherwise attached to the container. To make a Molotov cocktail explode, one ignites the wick, and then the container of flammable agent can then be thrown or otherwise mechanically broken. The wick then ignites the flammable agent, starting a fire.



On September 21, 2020, there was a large demonstration near the Multnomah County Sheriff's Office 'Penumbra Kelly Building'. At approximately 11:00 p.m., FBI surveillance units observed an individual (depicted below) light on fire and throw an object toward the Penumbra Kelly building property.

At the time, multiple PPB officers were stationed in a sound truck, equipped with police markings, lights, siren, and a long-range acoustic device system.² One officer observed a burning object flying through the air towards his vehicle. The object landed on the upper parking lot of the Penumbra Kelly property, approximately ten to fifteen feet away from the sound truck. The officer exited the vehicle and discovered a large yellow bottle that resembled a beer growler. The bottle had a burnt rag stuffed in the mouth of the bottle and contained a large amount of liquid. Portland

² The sound truck was parked within the Penumbra Kelly property upper parking lot during the majority of the demonstrations from September 21-22.

Fire and Rescue (PFR) personnel responded and recovered the suspected incendiary/destructive device, also known as a Molotov cocktail. A PPB Fire investigator tested the liquid inside, and it was found to be flammable.

The Molotov cocktail consisted of a yellow glass bottle or growler³ with a “Goodwill” sticker on the bottom (depicted below), a cloth wick, and ignitable liquid, yellowish green in color. Alcohol Tobacco and Firearms (ATF) special agents assisted with the device recovery which was still fully intact. It was later determined the bottle was one of the growlers purchased at Goodwill by Muhammad and McGuire on September 4, 2020:

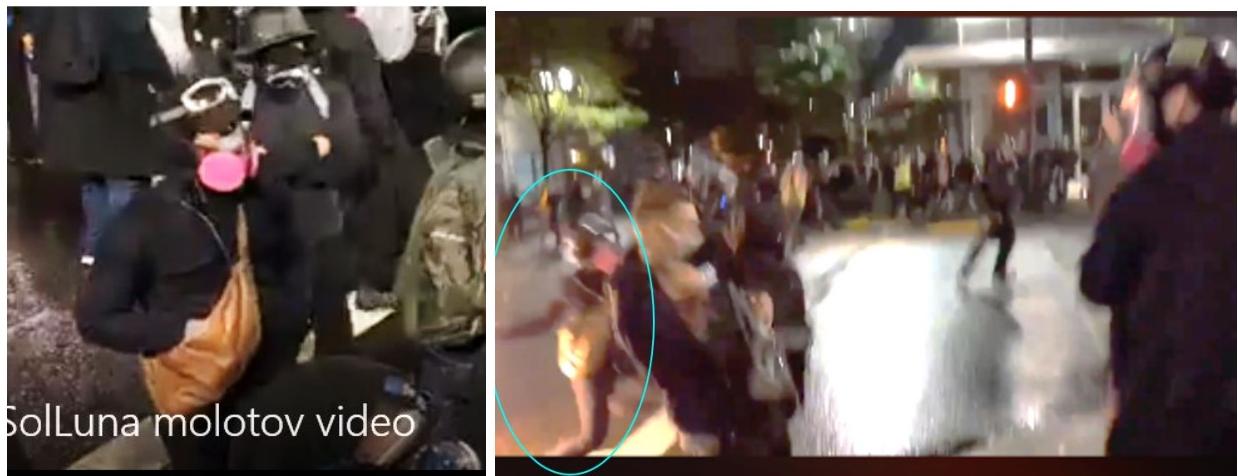


ATF later compared DNA recovered from the growler to that of Muhammad and McGuire. A 3-person mixture of both male and female DNA profiles was found specifically on the brown cloth wick that was stuffed into the neck of growler used to make the Molotov cocktail. The report concluded that Muhammad and McGuire’s DNA profiles make up the 3-person mixture with a probability of more than one in one trillion.⁴

³ A growler is a glass, ceramic, or stainless-steel bottle generally used to transport draft beer. They are commonly sold at breweries and brewpubs to sell take-out craft beer.

⁴ While this result may be regarded as a statistical “match”, DNA results are not specifically reported as “matches”. Instead, results are reported as a statistical probability. Muhammad and McGuire’s known DNA profiles were not associated with any other items of evidence.

On September 23, 2020, there was a large demonstration at the Multnomah County Justice Center (MCJC). During the demonstration, protesters set the building on fire and broke windows to the building. Police attempted to move the crowd away from the building. When officers advanced towards the crowd, an individual threw a Molotov cocktail in a large yellow growler that landed in front of the officers. It shattered and exploded into a large fireball when it hit the ground. While some officers were able to move out of the way, one officer was sprayed with fire and his lower leg caught on fire for a brief moment. Multiple videos show a male resembling the defendant throwing the bottle and wearing a unique tan/golden satchel:



Muhammad has posted photos on Facebook wearing the same satchel:



Law enforcement was able to recover a piece of the shattered Molotov cocktail; it looked like a portion of the yellow growler-type bottle recovered from the September 21, 2020, Molotov cocktail at the Penumbra Kelly Building:



No latent fingerprints were obtained from the piece, but ignitable liquids were identified as being present.

On October 11, 2020, PPB officers were working in downtown Portland and monitoring a protest involving approximately 250 people. During the protest, one officer reported that the group began to heavily vandalize various businesses and parks in the city. In particular, the group tore down statues, smashed out windows at the Oregon Historical Society, Portland State University, Starbucks, Bank of America, and other area businesses. Additionally, the group used chains and vehicles to rip down and vandalize statues of Abraham Lincoln and Theodore Roosevelt.

During the event, FBI agents in plain clothes observed Muhammad within the crowd. Muhammad was dressed in all black with a few small unique identifying details such as red and grey gloves. He was also carrying a shield that read words to the effect of “abolish police.” Agents

report that during the event, they observed Muhammad use a metal baton to smash out the windows of the Oregon Historical Society, Portland State University, and many other businesses. Damages to these various buildings exceeded \$40,000.

Law enforcement attempted to arrest Muhammad, but he fled. Multiple officers chased after him; he tried to run behind some barrels before finally being arrested. Muhammad had a loaded pistol magazine in his pocket. Another officer recovered a loaded pistol behind the barrels Muhammad ran behind. The pistol magazine located in Muhammad's pocket matched the pistol located behind the barrels. The pistol and magazine located on Muhammad contained 30 rounds of 9 mm ammunition.

On October 12, 2020, PPB obtained three state search warrants for the backpack Muhammad had been in possession of the night of his arrest, a dark blue Ford F250 bearing Indiana temporary license L402485, which Muhammad and McGuire had been driving, and a parked RV trailer in which they had been staying in. During the search of the travel trailer, police located multiple firearms including an AR-15 and shotguns. Law enforcement then spoke with the owner of the AR-15 rifle, AW1. AW1 explained that while living in Indiana, he met Muhammad in the months prior to his travel to Portland. He explained that Muhammad was attempting to recruit people to engage in violent activities, including an armed forceful takeover of a radio or television station. AW1 described Muhammad as a communist revolutionary who was attempting to gather people with firearms to engage in acts of violence.

Law enforcement found the receipt for the September 4, 2020 Goodwill purchase in McMinnville, Oregon showing Muhammad and McGuire purchased a number of glass growlers in the truck. Investigators also located several black baseball style hats, respirators and filters, a black COVID-style mask with a fist on the front, a black cowboy hat, a pair of yellow/black 'Mechanix'

gloves, a black plastic helmet, two tactical body armor-type plates, and two road flares. The COVID-style mask and cowboy hat appeared to be the items Muhammad was wearing during the Goodwill purchase captured on surveillance video.

Law enforcement also recovered five gas containers with different types of suspected fuel inside. ATF laboratory examination of the liquid from inside all five-gas containers confirmed that they all contained ignitable liquids, to include gasoline, ethanol, heavy petroleum distillates (HPDs), and fatty acid methyl esters (FAMEs).

Muhammed's trip to Portland does not appear to be an isolated event; on his publicly available social media sites, he showed Anti-Government/Anti-Authority Violent Extremist (AG/AAVE) ideology. Muhammad traveled to Louisville, Kentucky the weekend of August 14-16, 2020, with five other people to meet with groups in Louisville, Kentucky and to conduct firearms and tactical training in support of AG/AAVE ideology. Other postings included a photograph depicting events that occurred in Kenosha, Wisconsin and captioned it "Kill cops. Shoot back. We say no justice no peace we mean NO PEACE." A few days later, on Facebook he said he was in in Portland, Oregon, participating in First Amendment protected protests against police brutality. That same date, Muhammad re-posted a video of alleged police brutality where the subject fights back and captioned it "Fuck 12 shoot back." The next day, Muhammad referenced a news article regarding Chicago gangs forming a pact to execute cops who draw weapons and captured the article "shoot, every opportunity you have." Within a week, he was engaged in violent protests in Portland.

ARGUMENT

Muhammad engaged in violent rioting and threw incendiary devices at or near law enforcement officers on more than one occasion, which could have resulted in death or serious

bodily injury. He supplied rioters with baseball bats and engaged in destructive rioting that shook downtown Portland. When confronted, he fled from law enforcement while carrying a firearm. For his actions, Muhammad not only faces a federal indictment related to the unlawful use of explosives and for committing a civil disorder, he also faces attempted murder charges in the State of Oregon. The federal charges include a ten-year mandatory minimum, and the state charges carry potential Measure 11 sentences. Muhammad's intent since he left Indiana has been clear—he wanted to commit violent acts against law enforcement and advocate others do so as well. And when law enforcement attempted to apprehend him, he fled. He put lives at risk and destroyed property all while heavily armed. He is not only a danger, but also a flight risk.

Under the bail statute, 18 U.S.C. § 3142, the government bears the burden of proving by a preponderance of the evidence that a defendant is a flight risk; community danger requires clear and convincing proof.⁵ *United States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015). Four factors help guide release decisions: (1) the nature and circumstances of the offense; (2) the weight of the evidence; (3) the nature and seriousness of the danger posed to the community; and (4) defendant's history and characteristics. 18 U.S.C. § 3142(g). The sentencing exposure also can weigh in favor of detention. *See Santos-Flores*, 794 F.3d at 1092 (recognizing that the severity of the anticipated punishment favors detention).

A Grand Jury found there was probable cause that Muhammad committed multiple federal offenses; the evidence, as detailed here, is overwhelming. (ECF No. 14). Not only was Muhammad seen at the riots, he was seen purchasing the supplies to make the Molotov cocktails.

⁵ The Federal Rules of Evidence do not apply in detention proceedings. Fed. R. Evid. 1101(d)(3); 18 U.S.C. § 3142(f). Accordingly, both the government and the defense may present evidence by proffer or hearsay. *United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986); *see also United States v. Bibbs*, 488 F. Supp. 2d 925, 925, 26 (N.D. Cal. 2007).

This was not a one-time act during a protest; Muhammad came to Portland—while heavily armed—with the intent to engage in violent activities. And he did just that. When police tried to stop him, he fled.

Considering these allegations, the Court previously ruled that Muhammad is a flight risk and a danger to the community, specifically determining that “[n]o condition or combination of conditions will reasonably assure the appearance of defendant as required” or “assure the safety of other persons and the community.” (ECF No. 9). The Court based these conclusions not only on mental health and substance abuse concerns, but also due to the nature of the offense(s), arrest behavior, possession of weapons, violent behavior, and criminal history. (ECF No. 9). Muhammad has not submitted any new information that should reverse those conclusions.

Neither the substance abuse assessment nor the interim psychological evaluation alleviates the Court’s adjudged concerns for flight risk and danger to the community. Neither interview even included discussions with Muhammad about the facts underlying the charged offenses. Yet even Muhammad’s admitted entanglements with substance abuse and existing mental health issues would be of immediate concern upon release; the Court previously determined that these concerns formed part (though not all) of its decision to detain Muhammad. (ECF No. 9). *Cf.* Furthermore, there are no options the Government is currently are of for lock-down facilities that could facilitate the provided substance abuse/psychological treatment recommendations.

Muhammad’s history and characteristics, as evidenced by his own words on social media and his actions in August and September, reveal a person driven to violence. As a result, he now faces serious federal/state criminal charges and a significant sentence. Muhammad is a danger and a flight risk; he put the entire community—a community he is not even part of—at risk while specifically targeting law enforcement. Detention is still warranted. (ECF No. 14). *Cf.*

CONCLUSION

Muhammad traveled to the District of Oregon to engage in violent rioting. He caused extensive property damage and threatened the lives of multiple law enforcement officers. When confronted, his impulse was to flee, firearm in-hand.

Malik Muhammad still poses a danger to the community and is a flight risk. He should remain detained.

Dated: October 27, 2021

Respectfully submitted,

SCOTT ERIK ASPHAUG
Acting United States Attorney

s/ Adam E. Delph
ADAM E. DELPH
Assistant United States Attorney